

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RANDY SPENCER,

Plaintiff,

v.

MICHAEL J. ASTURE,
Commissioner of Social Security,

Defendant.

Civil Action No. 08-329 Erie

MEMORANDUM ORDER

Plaintiff's social security complaint was received by the Clerk of Court on November 26, 2008, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 18], filed on March 1, 2010, recommended that the Plaintiff's Motion for Summary Judgment [Doc. No. 11] be dismissed, and that the Defendant's Motion for Summary Judgment [Doc. No. 16] be dismissed, and that the case be remanded to the Commissioner for further proceedings. The parties were allowed ten (10) days from the date of service to file objections. Objections were filed by the Plaintiff on March 9, 2010 [Doc. No. 19].

After de novo review of the documents in the case, together with the Report and Recommendation and objections thereto, the Court declines to adopt the Magistrate Judge's Report and Recommendation insofar as it recommends that the case be remanded to the Commissioner for further proceedings. Rather, the Commissioner will be ordered to supplement the administrative record or notify the Court of his inability to do so. See Andrews v. Astrue, 2010 WL 610933 at *3 (W.D.Ark. 2010).

AND NOW, this 25th day of March, 2010;

IT IS HEREBY ORDERED that the Commissioner shall, within sixty (60) days of the date of this Memorandum Order, supplement the record with the missing transcript of the last hearing on August 3, 2007, as well as the additional records requested by the ALJ during that hearing, as referenced in a letter from Attorney Chaban to ALJ

Porter dated October 4, 2007, Document # 4-1, page 380.

IT IS FURTHER ORDERED that in the event the Commissioner is unable to supplement the record, he is directed to notify the Court of his inability to do so.

This matter will be administratively closed pending the submission of the transcript and documents referenced above or a report from the Commissioner that the record cannot be supplemented.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge